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1980

# The State of Utah v. Marcella Rae Griffin : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-vs-

MARCELLA RAE GRIFFIN,

Defendant-Appellant.

Case No. 15227

BRIEF OF RESPONDENT

AN APPEAL BY THE DEFENDANT, FROM HER  
CONVICTION AND JUDGMENT OF AGGRAVATED  
ROBBERY IN THE DISTRICT COURT OF THE  
THIRD JUDICIAL DISTRICT, IN THE  
COUNTY OF SALT LAKE, STATE OF UTAH,  
HONORABLE DAVID B. DEE, JUDGE.

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## TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE-----	1
DISPOSITION IN THE LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	1
STATEMENT OF THE FACTS-----	2
ARGUMENT	
POINT I: POLICE OFFICERS DID NOT EXCEED THE SCOPE OF CONSENT GIVEN TO SEARCH THE GRIFFIN RESIDENCE; THE DUFFEL BAG FOUND IN PLAIN VIEW WAS ADMISSIBLE EVIDENCE-----	4
CONCLUSION-----	9

## CASES CITED

Bumper v. North Carolina, 391 U.S. 543 (1968)-----	4
Schneckloth v. Bustamonte, 412 U.S. 218 (1973)-----	4
State v. Criscola, 444 P.2d 517 (1968)-----	5
State v. Folkes, 565 P.2d 1125, <u>cert. denied</u> 434 U.S. 871 (1977)-----	7
State v. Koucoules, 343 A.2d 860 (Maine 1974)-----	5
State v. Tuttle, 16 Utah 2d 288, 399 P.2d 580 (1965)-	4
United States v. Dichiarinte, 445 F.2d 126 (7th Cir. 1971)-----	6

## STATUTES CITED

Utah Code Ann. § 76-6-302 (1953), as amended-----	1
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IN THE SUPREME COURT OF THE  
STATE OF UTAH

- - - - - : - - - - -  
STATE OF UTAH, :  
Plaintiff-Respondent, :  
-vs- : Case No. 16669  
MARCELLA RAE GRIFFIN, :  
Defendant-Appellant. :

- - - - - : - - - - -  
BRIEF OF RESPONDENT  
- - - - -

STATEMENT OF THE NATURE OF THE CASE

The appellant was charged with aggravated robbery in violation of Utah Code Ann. § 76-6-302 (1953), as amended. She was convicted of that crime by a jury in the District Court of the Third Judicial District, in and for the County of Salt Lake, the Honorable David B. Dee, Judge, presiding. This is an appeal from that conviction.

DISPOSITION IN THE LOWER COURT

The appellant was found guilty. The court entered judgment and sentenced the appellant to serve the statutory term of five years to life in the Utah State Prison (R. 1299-1301).

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the conviction rendered in the court below.

### STATEMENT OF THE FACTS

On July 18, 1978, four individuals were seen getting into a black and silver Camaro in the vicinity of 169 Wentworth Avenue (Appellant Griffin's residence) (R. 372, 374). The appellant and three other persons were later seen in the Camaro (R. 398). The car stopped in front of the House of Sherman Beauty Salon; two men got out of the car and entered that establishment (R. 400).

One of the men wore a moustache, a beard and a blonde Afro wig (R. 733). The other man wore gray pants, a black turtleneck sweater and was disguised as a black man (R. 644). He wore a black Afro wig and his skin appeared to be painted black (R. 575, 583, 644). Both men were armed (R. 574, 576, 710, 732).

The appellants ordered the younger women in the salon to sit on the floor and everyone was told to take off their jewelry (R. 401-405). The men then shoved jewelry and purses into a large tote bag and took money from the salon's safe (R. 402-406).

At approximately 2:29 p.m. Detective Labrum saw Marcella Griffin get out of the black and silver Camaro and walk up the steps leading to the entrance of the House of Sherman. He then saw her walk back down those steps carrying several purses. She got into the Camaro and drove

away (R. 786-793). Within a short time the car was stopped by Detectives Welti and Lightfoot (R. 1047).

The two men fled from the scene of the crime in a 1974 beige-colored Volkswagen belonging to one of the hairdressers at the salon, Dawn Harmon (R. 1010). They drove to the residence of Vivian Gonzales, left their disguises there and drove away in a 1969 Green Chevrolet (R. 1101). It was later revealed that the car was owned by Marcella Griffin (R. 1149).

After the Camaro was stopped, Detective Voyles asked Marcella Griffin if he could take her children out of her home on Wentworth Avenue, search for the suspects and make the area safe. Mrs. Griffin consented (R. 1128, 1133). It was after 3:00 p.m. when the officers began to search the house (R. 1137, 1163). While the officers were still in the house, a green Chevrolet parked on the road near appellant Griffin's house (R. 1092, 1149). It was approximately 4:30 p.m. at that time (R. 1181). Two men got out of the car and walked up the driveway. The appellants appeared to be heading for the back door; the two men tried but could not get in the back door. The men left the back area but later appeared to return. An officer came out to head off the appellants and it was at that time that a duffel bag containing a gun and other evidence

of the crime was found on the back porch. The appellants were arrested while trying to pry a window open in the front of the house (R. 1183). The green Chevrolet was thereafter impounded and an inventory search was conducted at the stationhouse (R. 1149).

#### ARGUMENT

##### POINT I

POLICE OFFICERS DID NOT EXCEED THE SCOPE OF CONSENT GIVEN TO SEARCH THE GRIFFIN RESIDENCE; THE DUFFEL BAG FOUND IN PLAIN VIEW WAS ADMISSIBLE EVIDENCE.

A party may waive his or her constitutional right to be free from an unreasonable search by consenting to the search of a house which would otherwise be improper. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). A search can be upheld on the basis of consent if the individual consents to a search voluntarily with no duress or coercion. Bumper v. North Carolina, 391 U.S. 543 (1968). This Court has likewise held that a search made pursuant to a homeowner's consent is lawful. State v. Tuttle, 16 Utah 2d 288, 399 P.2d 580, 582 (1965).

The appellant does not argue that the consent she gave to search the Griffin residence was involuntary. She admits that valid consent was given to remove the Griffin children, search for the suspects and make the area safe.

The appellant does not question the trial court's ruling that the duffel bag was lawfully seized on the theory that it was in plain view and seized incident to the appellant's arrest. However, appellant argues that the officers exceeded the scope of the consent because they remained at the Griffin residence until the suspects arrived and, therefore, the duffel bag was inadmissible evidence.

The determination as to the reasonableness of a search is for the trial judge due to the responsibility of the court in controlling the admissibility of evidence and his advantaged position in passing on such matters. State v. Criscola, 444 P.2d 517, 519 (1968). His rulings should be "indulged with a presumption of correctness, and should not be disturbed unless it clearly appears that he was in error." Id. Respondent contends that the search of the house was reasonable since the objectives of the search, consented to by the appellant, were not exceeded.

When a purpose is included in the request to search, as it is in this case, the consent is construed as authorizing only that intensity of police activity necessary to accomplish the stated purpose:

Where permission has been given to search for a particular object, the ensuing search remains valid as long as its scope is consistent with an effort to locate that object.

State v. Koucoules, 343 A.2d 860 (Maine 1974) (emphasis added).



The only limits prescribed in the consent to search given by the appellant were (1) the officers were to look for her children, (2) they were to search for the suspects, and (3) they were to make the area safe--they were to look for nothing else but the children and the suspects. No time limit was placed on the search: it is difficult to estimate just how long it would take to "make the area safe." The search was at all times consistent with the stated objectives. The officers did not use the consent as a license to conduct a general exploratory search. There is no evidence showing that the officers searched drawers, containers, etc., which could not be used to conceal a person.

This does not mean, however, that when consent is given to search for a particular object the police may never seize something other than the designated items.

Of course, if the government agents acting within the parameters of defendant's consent had come upon contraband, fruits or instrumentalities of crime, or clear evidence of criminal behavior which was lying in plain view, they could have seized those items . . . .

United States v. Dichiarante, 445 F.2d 126 (7th Cir. 1971).

Thus, when an officer is in a position where he has the right to be, sees evidence in plain view, and reasonably believes the object to be evidence of the crime, seizure

of such evidence is lawful. This Court has acknowledged the plain view doctrine. In State v. Folkes, 565 P.2d 1125, cert. denied 434 U.S. 871 (1977), this Court upheld the admissibility of a bottle containing heroin which was seized at the appellant's home:

The officers were where they had a right to be. Without any intrusion upon the defendant, their attention was arrested by activities which indicated quite unmistakably that he was committing a felony. Therefore, they could arrest him without a warrant; and they could take anything in the immediate area which was so involved in the criminal conduct that it would serve as evidence in proof of the crime. Though the bottle from which the narcotic had been taken was placed on the dresser in the adjoining bedroom, it was in the immediate vicinity; and it was in plain view in that no search was required to discover it. In fact the charge that there was a "search" in this case is for that reason a distortion of language, because there was really no "search" involved.

Id. at 1127, 1128 (emphasis added).

Respondent submits that the officers were in a position where they had a right to be since the scope of the consent to search had not been exceeded and that the bag found at the residence containing evidence of the crime was admissible evidence found in plain view during the attempt to arrest the appellants. The trial court agreed that the officers had a right to be in the house at the time the appellants arrived and that the duffel

bag was lawfully seized.

. . . the officer was there with her (Marcella Griffin's) permission, to look for the subjects, suspects, and went out the back door, didn't see this big sport suit case (duffel bag), and later when he did go it was there. Probably the inference I would draw, it was taken with them when they got out of the green automobile and came to the house and dropped it when they couldn't get in the back door. Therefore, part of the instrumentalities of the crime and the fruits of the crime and incident to arrest, they could pick that up and possess it and use it in evidence against the subjects--suspects in this case. (R.1147)

In this case the officers had the right to be in the Griffin residence. The Appellant had given them permission to enter the house, obtain her children for safekeeping, search for the suspects and make the area safe. The officers had not exceeded the scope of the consent by looking for anything other than the children and the suspects; nor did the officers remain there for an unreasonable amount of time. The testimony at trial indicated that the officers arrived at the Griffin residence after 3:00 p.m. (R. 1137), and began the search. The male suspects arrived at approximately 4:30 p.m. (R. 1181). The record does not indicate just what efforts were taken to ensure the safety of the children or to search for the suspects. Furthermore, the record does not indicate what procedures (or their extensiveness) were taken to make the area safe. It is, therefore, difficult to tell from the record whether

the time spent searching the appellant's home was unreasonable. The record does show that an officer was searching the back area of the house, including the porch where the duffel bag was later found, just 15-20 minutes before the appellants arrived at the residence (R. 1165). Seizure of the duffel bag cannot be said to exceed the scope of the consent search. The duffel bag was seen in plain view and under circumstances giving rise to the reasonable belief that the evidence had been left there by the two men when they tried to enter the back door. The trial court, therefore, did not err in ruling that the evidence was admissible. The evidence was not the fruit of an unreasonable search since it was seen in plain view by an officer who had the right, by the appellant's consent, to be in a position to see the evidence.

#### CONCLUSION

The determination as to the reasonableness of a search is for the determination of the trial judge and his rulings should not be disturbed unless it clearly appears that he was in error. The trial judge in this case properly ruled that the officers had a right to be in the Griffin residence--they had not exceeded the scope of the consent search. Furthermore the evidence seized at that time was found in plain view and therefore was admissible evidence.

Respondent, therefore, urges this Court to affirm  
the judgment of the lower court.

Respectfully submitted.

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